IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3730 of 2007

with

SPECIAL CIVIL APPLICATION No. 6420 of 2007

to

SPECIAL CIVIL APPLICATION No. 6432 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANDUBHAI DAHYABHAI & 13 - Petitioner(s)
Versus
ADDL. MAMLATDAR AND AGRICULTU-RAL TRIBUNAL (GANOT)
CHORYASI & 2 - Respondent(s)

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Appearance :
MR SH SANJANWALA with MR AMIT V THAKKAR for Petitioner(s) : 1 - 14.
NOTICE SERVED BY DS for Respondent(s) : 1 - 3.
MR MAULIK NANAVATI, AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 09/03/2007

ORAL JUDGMENT

1. Rule. Mr. Nanavati, learned AGP waives service of rule for the State Authorities.

2. The petitioners have preferred the petitions for challenging the order passed by the Mamlatdar dated 27.04.2000 and its confirmation thereof by the Tribunal, whereby the application of the petitioners under Section 70(O) of sthe Bombay Tenancy & Agricultural Lands Act (hereinafter referred to as 'the Act')is rejected.

3. Heard Mr.Sanjanwala with Mr. Amit Thakkar for the petitioners and Mr. Nanavati, learned AGP for the respondent authorities.

4. Upon hearing the learned advocates appearing for the petitioners, it appears that the issue which arise for consideration in the present petitions are covered by the decision of this Court dated 17-18-23.01.2007 in Special Civil Application No. 9609 of 2006 and allied matters, whereby this Court has elaborately dealt with the aspects of consideration of the case by the Mamalatdar in the event such application is made under Section 70(O) of the Act by the tenant or the successor of the tenant. Further, as per the view taken by this Court in the said decision, no appeal is maintainable against the decision of the Mamlatdar but, within a stipulated time limit, as provided under statute, the revisional power can be resorted under Section 76A of the Act. Further, as per

the said decision, the effect of the circular on the basis of which the Mamlatdar were to decide the application under Section 70(O) of the Act is diluted by observing that the other evidence may also be considered subject to the restriction mentioned in the said Judgment.

5. Therefore, the learned counsel appearing for both the sides are in agreement on the aspect that so far as the legality and validity of the order passed by the Mamlatdar is concerned, the issues are covered by the said decision of this Court.

6. It appears that in the present case, the additional circumstances are that the appeal was preferred against the order of the Mamlatdar before the Deputy Collector and the Deputy Collector in purported exercise of the appellate power, had set aside the order of the Mamlatdar and has allowed the appeal in favour of the petitioners. The State carried the matter in revision before the Tribunal and the Tribunal vide Judgment dated 27.01.2006, in Revision Application No.65 of 2002, has allowed the revision and as a consequence thereof, the order passed by the Mamlatdar is restored. On the aspects of legality and validity of the order passed by the Mamlatdar, as observed earlier, the matter will have to be considered in light of the decision of this Court. However, it

appears that the Tribunal in the impugned decision has referred to the proceedings under the Urban Land Ceiling Act and the declaration of the land as surplus land, and the said land is subject matter of the present petitions.

7. Upon the ascertainment of the stand of the State Government on the aspects of the land in question whether has vested to the Government under the ULC Act prevailing then or the position on account of the Repealing Act, Mr. Nanavati, learned AGP has declared before the Court that the proceedings under the ULC Act were subject matter of Special Civil Application No. 6075 of 1989 before this Court (Coram : M.S. Shah, J.) and as per the decision dated 21.03.2002 passed by this Court, in the said petition, in view of the Repeal Act, as the possession was not taken, the proceedings under the ULC Act of 1976 are declared as abated. He further submitted that the State Government has accepted the said decision and has not carried further before any higher forum.

8. Under these circumstances, it appears that there is no case for consideration of the issue for declaration of the land as excess land under the ULC Act of 1976 and its consequential effect upon the land as per the Act.

9. Under the above circumstances, the impugned orders passed by the Mamlatdar, the decision of

the Deputy Collector in Appeal and of the Tribunal in revision are quashed and set aside with the further direction that Mamlatdar shall decide the application afresh in light of the observations and directions issued by this Court dated 17-18-23/01/2007 in the case of Babubhai Vitthalbhai Patel through Power of Attorney Vs. Mamlatdar and Agricultural Lands Tribunal (Ganot)& Anr. in Special Civil Application No. 9609 of 2006 & allied matters.

10. Petitions are partly allowed to the aforesaid extent. Rule made absolute accordingly with no order as to costs.

(JAYANT PATEL, J.)

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